United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-1861

B P/S

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

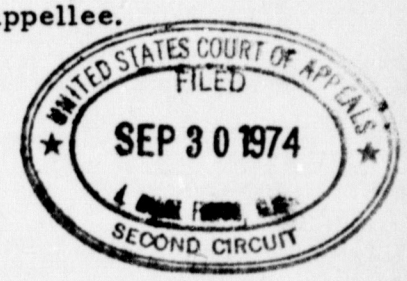
SENATE REALTY CORPORATION,

Petitioner-Appellant,

-against-

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.



Appeal from a Decision of the
United States Tax Court

BRIEF FOR PETITIONER-APPELLANT

DONOVAN LEISURE NEWTON & IRVINE
30 Rockefeller Plaza
New York, New York 10020
Attorneys for Petitioner-Appellant

John Cooley Baity
M. Lauck Walton
Of Counsel

September 30, 1974

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1

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Regulations

Miscellaneous

UNITED STATES COURT OF APPEALS

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SENATE REALTY CORPORATION,
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APPEAL FROM A DECISION OF THE
UNITED STATES TAX COURT

BRIEF FOR PETITIONER-APPELLANT

This is an appeal by petitioner, Senate Realty Corporation ("Senate"), pursuant to 26 U.S.C. § 7482(a), from the denial of a motion for leave to file a motion to vacate a final Tax Court stipulated decision.

I. ISSUES PRESENTED

1. Does the Tax Court have jurisdiction to vacate a final stipulated decision on the ground of fraud upon the court?

2. Did the Tax Court commit error in refusing appellant a hearing on its motion to vacate a final decision?

II. STATEMENT OF THE CASE

A. Preliminary Statement

This is an action brought by Senate against the Commissioner of Internal Revenue (the "Commissioner") in the Tax Court contesting tax deficiencies asserted by the Commissioner in the aggregate amount of $352,238.25 with respect to the taxable year of Senate ended August 31, 1959. The jurisdiction of the Tax Court was based upon sections 6213(a) and 7442 of the Internal Revenue Code.

On May 7, 1973, Howard A. Rumpf, Esq., then counsel for Senate, entered into a stipulation with the Commissioner compromising Senate's alleged tax deficiencies. The Tax Court entered a decision on May 7, 1973 pursuant to this stipulation. Ninety days thereafter, on August 6,

1973, that decision became final pursuant to sections 7481 and 7483 of the Internal Revenue Code.

On February 22, 1974, Senate filed in the Tax Court, pursuant to Rule 162 of the Rules of Practice and Procedure of the United States Tax Court, a motion for leave to file a motion to vacate the stipulated decision of May 7, 1973. Simultaneously, the substantive motion to vacate the stipulated decision was lodged with the Tax Court. The motion for leave to file the motion to vacate the decision was denied by the Hon. William H. Quealy on March 18, 1974.

Notice of appeal from the denial of Senate's motion for leave to file a motion to vacate the May 7, 1973 stipulated decision was filed on June 13, 1974.

B. Statement of Facts Relevant to Issues Presented

Senate is a corporation organized and operated under the laws of the State of New York. (32A)* On February 15, 1966, a deficiency notice was issued with respect to the taxable year of Senate ended August 31, 1959 in which deficiencies were asserted in the aggregate amount of $352,238.25 (tax - $234,825.50; penalty - $117,412.75). (11A-13A) Senate thereupon filed a petition to contest these alleged tax deficiencies in the Tax Court. (5A-9A) Its attorney was Alvin C. Martin, Esq. 9a.

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* The numbers herein refer to pages of the Appendix to Appellant's brief.

In November, 1969, through its President and principal shareholder, the late Alfred Dallago, Senate retained Howard A. Rumpf, Esq., to represent it with respect to contesting the above-mentioned alleged deficiencies. In order to provide Mr. Rumpf with the requisite authority to represent Senate before the Internal Revenue Service (as required by 26 C.F.R. § 601.502(c)(1)), Mr. Dallago, as President of Senate, signed an IRS standard Form 2848 Power of Attorney on November 13, 1969. (44A) Mr. Dallago died on April 27, 1972, his estate thereby becoming the principal shareholder of Senate. (63A, 69A)

Mr. Rumpf had conferred with representatives of the Commissioner, at least some of which conferences included settlement discussions. Sometime in early December 1972, Mr. Rumpf wrote George Kossoy, Esq., of Goldwater & Flynn, to inform him of these discussions. (65A, 77A) Mr. Kossoy was then and is now the attorney of Senate's principal shareholder, the Estate of Alfred Dallago. In this undated letter (65A, 78A) received by Mr. Kossoy on December 11, 1972, Mr. Rumpf state "[i]n a conference between the appellate division and the general council [sic] the amount of the proposed tax deficiency has been reduced to approximately $100,000 from approximately $265,000. . . . There are additional years open for both the corporation [Senate]

and the individual [the Estate of Alfred Dallago] and as yet no information is available as to what disposition the government will undertake in these years." (63A, 65A, 77A)

Seeing this letter alone, one reading could certainly be that Mr. Rumpf thought that he had settled the case and that he had authority to do so. But if Mr. Rumpf ever thought that to be the fact, Mr. Kossoy's prompt letter in response must have destroyed that belief for on December 15, 1972, Mr. Kossoy wrote Mr. Rumpf that "[b]efore a decision can be made on the subject matter of the claim against Senate Realty and the settlement which you hope you can make, it would be necessary for the estate and all those concerned with its welfare, to examine all the possible tax claims that may be asserted against the estate generally. I think that if we can somehow get to the point of knowing what the total claim would be that might be asserted against the estate as such, then we can possibly make an offer in compromise." (66A, 79A) No such determination of the total claim that may be asserted has ever been made.

Despite the fact that Kossoy's December 15, 1972 letter spoke of "the settlement which you hope you can make" and pointed out that additional information was necessary after which "we can possibly make an offer in compromise," a stipulation of settlement was actually entered into by

Mr. Rumpf approximately five months later. Further, according to Mr. Rumpf's affidavit (46a), during an April 1973 telephone call in which a settlement was not mentioned, Mr. Rumpf assured Mr. Kossoy that he would continue to handle Senate's case.

Through the intructions he received in his correspondence with Mr. Kossoy, Mr. Rumpf was clearly apprised that he was without authority to enter into a settlement stipulation on behalf of Senate. In his affidavit he does not claim otherwise, nor does he assert that he received any such authority from Mr. Kossoy, the attorney for the Estate of Alfred Dallago, from Mr. Dallago's widow and sole beneficiary who is now Senate's President, or from any other person whatsoever. (67A-70A)

On or about August 24, 1973, Senate received a notice from the Commissioner demanding payment of $259,906.80, including $117,412.75 of tax, $58,706.38 of penalty and $83,787.67 of interest. (36A) By permission of an associate of Mr. Rumpf, Senate thereupon obtained copies of certain documents from Mr. Rumpf's offices (33A, 34A) which indicated that on May 7, 1973 Mr. Rumpf had stipulated that there was an income tax deficiency and penalty due from Senate (39A, 40A), and that the Tax Court had entered a decision on that same day pursuant to said unauthorized stipulation. (39A, 40A)

On August 30, 1973 the President of Senate, Mrs. Alba Dallago, notified the Commissioner that Mr. Rumpf had had no authority to settle the claims of the Commissioner against Senate and that Mr. Rumpf had attempted to do so without the knowledge or consent of Senate. (35A, 46A) Senate then obtained counsel and sought leave in the Tax Court to vacate the May 7, 1973 decision (28A, 29A, 30A) and such leave having been denied (82A) took this appeal. (83A)

III. ARGUMENT

A.

THE TAX COURT HAS JURISDICTION TO VACATE THE STIPULATED DECISION OF MAY 7, 1973 ON THE GROUND OF FRAUD UPON THE COURT

The stipulated decision Senate seeks to vacate was entered in the Tax Court on May 7, 1973, and became final ninety days thereafter, on August 6, 1973, pursuant to Sections 7481 and 7483 of the Internal Revenue Code. Not until the latter part of August 1973, did Senate learn of the existence of the May 7th decision entered upon the unauthorized stipulation of its counsel. Accordingly, Senate had no opportunity to move to vacate said decision prior to its becoming final.

The question of whether the Tax Court has jurisdiction to vacate a decision which has become final under sections 7481 and 7483 of the Internal Revenue Code has been considered in several courts of appeal. All of the circuits dealing with allegations of fraud upon the court agree that a final decision can be reopened if such fraud can be demonstrated.

In Kenner v. Commissioner, 387 F.2d 689 (7th Cir.), cert. denied, 393 U.S. 841, rehearing denied, 393 U.S. 971 (1968), the Seventh Circuit dealt specifically with fraud which had been perpetrated upon the Tax Court. The court held that the Tax Court can set aside a decision which is obtained by fraud upon the court after the date on which a decision becomes final, reasoning that "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." 387 F.2d at 691. Similarly, the Ninth Circuit in Toscano v. Commissioner, 441 F.2d 930 (9th Cir. 1971), followed Kenner and indicated that the Kenner holding was clearly correct in view of the Supreme Court's earlier decision in Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944).

In Hazel-Atlas, the attorney of a party seeking a patent published an article purporting to be written by a distinguished expert, acclaiming his client's device. The

patent issued. The patentee later lost an action for infringement in the District Court, but obtained a reversal on appeal, relying upon the spurious article. The losing party investigated the facts, and long after the judgment became final moved unsuccessfully in the Court of Appeals for an order permitting it to seek, in the District Court, an order setting aside the judgment entered pursuant to the Court of Appeals' mandate. On certiorari, the Supreme Court reversed. The Court found that there had been a "trail of fraud that had continued without break through the District Court and up to the Circuit Court of Appeals." 322 U.S. at 250. Fraud, the Court concluded, had been practiced upon the Circuit Court itself, and the Circuit Court had "both the duty and the power to vacate its own judgment and to give the District Court appropriate directions." 322 U.S. at 250.

The Kenner and Toscano holdings that the Tax Court has jurisdiction to vacate a final decision on the ground of fraud upon the court were again followed by the Ninth Circuit in Flood v. Commissioner, 468 F.2d 904 (9th Cir. 1972), cert. denied, 411 U.S. 906 (1973), and have been followed by the Third Circuit in Stickler v. Commissioner, 464 F.2d 368 (3d Cir. 1972), and acknowledged by the District of Columbia Circuit in Pasternack v. Commissioner, 478 F.2d 588 (D.C. Cir. 1973), citing Kenner.

It has been argued that an earlier Eighth Circuit case, Jefferson Loan Co. v. Commissioner, 249 F.2d 364 (8th Cir. 1957), takes a contrary position. That decision, however, involves no fraud by an officer of the court, nor any fraud on the court, so it is, at the most, dictum. In Jefferson, a motion to vacate a final stipulated Tax Court decision was denied where the corporate taxpayer's president, for his own personal advantage, had concealed the taxpayer's financial condition and had included income in the taxpayer's return, when the taxpayer, in fact, had earned no income. The Eighth Circuit affirmed the Tax Court's denial of the motion to vacate, taking the position that the Tax Court, as a court of limited statutory jurisdiction, was without the power to vacate a final Tax Court decision, even if such decision had been fraudulently obtained. The President of the company was not an attorney and not an officer of the court in any sense, and his fraud was directed at the corporation of which he was an officer. It should be noted that Kenner, Toscano, Flood, Stickler and Pasternack, were all decided after Jefferson, and each either expressly or implicitly rejected the Jefferson dictum. These cases carve out an exception to the finality rule where there is fraud by an officer of the court, a fact admittedly present here.

We respectfully submit that the authorities which reject or distinguish the Jefferson dictum are better reasoned and adhere more closely to the strong implication of the Supreme Court in Hazel-Atlas that a decision produced by fraud upon the court is not in essence a decision at all.

From the foregoing, it can be seen that where Senate has presented facts supporting its allegations of fraud upon the court, the Tax Court has jurisdiction to vacate the May 7, 1973 stipulated decision.

B.

SENATE HAS SHOWN FRAUD UPON THE COURT

(i) Mr. Rumpf, as counsel for Senate, was unquestionably an officer of the Tax Court whose actions are subject to judicial scrutiny for possible fraud upon the court.

It is black letter law that an attorney conducting a case in court is an officer of that court. See, e.g., Theard v. United States, 354 U.S. 278 (1957); Saier v. State Bar, 293 F.2d 756 (6th Cir.), cert. denied, 368 U.S. 947 (1961); Brooks v. Laws, 208 F.2d 18 (D.C. Cir. 1953); Laughlin v. Reynolds, 196 F.2d 863 (D.C. Cir. 1952); Booth v. Fletcher, 101 F.2d 676 (D.C. Cir.), cert. denied, 307 U.S. 628 (1938); Charles Oran Mensik, 37 T.C.

703 (1962), aff'd, 328 F.2d 147 (7th Cir.), cert. denied, 379 U.S. 827 (1964); Fada Gobbin, 18 T.C. 1159 (1952), aff'd, 217 F.2d 952 (9th Cir. 1954).

The circuits that have passed upon the jurisdiction of the Tax Court to vacate a final decision on grounds of "fraud upon the court" either directly or by implication accept the formulation that such fraud embraces fraud perpetrated by attorneys as officers of the Tax Court. Kenner v. Commissioner, supra, citing 7 Moore's Federal Practice ¶ 60.23 (2d ed. 1974); Pasternack v. Commissioner, supra, citing Kenner; Stickler v. Commissioner, supra; Toscano v. Commissioner, supra; 7 Moore's Federal Practice ¶ 60.33 (2d ed. 1974). Further, this Court in Kupferman v. Consolidated Research & Manufacturing Corp., 459 F.2d 1072 (2d Cir. 1972), in considering the power of a District Court to vacate a final decision, has noted that fraud upon the court embraces fraud perpetrated by attorneys upon the court.

In a case involving facts similar to those here, the Ninth Circuit recently considered a claim that the Tax Court had abused its discretion in denying a taxpayer's motion for leave to file a motion to vacate two final Tax Court stipulated decisions where the taxpayer had alleged that its attorney was unauthorized to enter into the stipulations on which the decisions were based. Flood v. Commissioner, supra.

As in Kenner, Toscano, and Stickler, the court scrutinized the conduct of the taxpayer's attorney as an officer of the court. Although the court found that counsel had been authorized to so stipulate, the court was quite clearly prepared to follow Kenner and Toscano had the facts warranted granting leave to file a motion to vacate the Tax Court decisions.

In the light of these cases there can be no doubt that Mr. Rumpf's conduct in entering into the stipulated decision is subject to judicial scrutiny for possible fraud upon the court.

(ii) An attorney before the Tax Court who compromises his client's legal rights without the authority of his client commits fraud upon the Tax Court.

It is clear that an attorney before the Tax Court who enters into an unauthorized settlement stipulation contrary to the instructions of his client commits fraud upon the court. Rule 201(a) of the Rules of Practice and Procedure of the United States Tax Court directs that "practitioners before the Court shall carry on their practice in accordance with the letter and spirit of the Code of Professional Responsibility of the American Bar Association." Rule 7-101(A)(3) of the ABA Code provides in pertinent part:

> "A lawyer shall not intentionally . . . prejudice or damage his client during the course of the professional relationship. . . ."

The ABA Code of Professional Responsibility further contains a series of ethical considerations ("EC") that detail the responsibility of an attorney to his client. EC 7-7 and 7-8 are peculiarly apposite here. EC 7-7 states, in pertinent part:

> "In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise, the authority to make decisions is exclusively that of the client, and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to an affirmative defense. . . ." (Emphasis added.)

Further relevant is EC 7-8:

> "A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. . . ." (Emphasis added.)

Even in the absence of the Tax Court's promulgation of the ABA Code of Professional Responsibility, any attorney practicing before the Tax Court would be bound by the basic common law rule that an attorney has no implied authority to compromise an action without his client's direction, knowledge or consent merely by virtue of his

general retainer. Rickets v. Pennsylvania, 153 F.2d 757 (2d Cir. 1946). The Supreme Court in United States v. Beebe, 180 U.S. 343, 352 (1901), citing Chief Justice Marshall in Holker v. Parker, 7 Cranch (11 U.S.) 436 (1813), has stated: "[T]he utter want of power of an attorney . . . to compromise his client's claim, cannot . . . be successfully disputed."

Authority to waive a substantial right of a client cannot be implied from the mere relationship of attorney and client. Bommarito v. Southern Canning Co., 208 F.2d 56 (8th Cir. 1953). An attorney has no power to surrender substantial legal rights of his client in the absence of express authority, and any stipulation entered into by an attorney waiving such rights is not effective without the client's specific assent. Himmelfarb v. United States, 175 F.2d 924 (9th Cir.), cert. denied, 338 U.S. 860 (1949). See also: Gilbert v. United States, 479 F.2d 1267 (2d Cir. 1973); West v. Bank of Commerce & Trusts, 167 F.2d 664 (4th Cir. 1948); Beirne v. Fitch Sanitarium, 167 F. Supp. 652 (S.D.N.Y. 1958).

Counsel for Senate, Mr. Rumpf, entered into an unauthorized stipulation with counsel for the Commissioner compromising the within action, and a decision thereon was entered in the Tax Court on May 7, 1973. That decision became final on August 6, 1973, ninety days thereafter.

Int. Rev. Code of 1954, §§ 7481, 7483. Senate did not learn of the stipulated decision, and therefore had no opportunity to move to vacate it, until after it had become final.

The facts show that Mr. Rumpf clearly recognized his obligation to inform his client of all relevant considerations with respect to any possible settlement of the within action. Mr. Kossoy, counsel to Senate's principal shareholder, the Estate of Alfred Dallago, received Mr. Rumpf's letter relating to a proposed settlement by Senate on December 11, 1972 some five months before the stipulation of settlement was signed in May 1973. Mr. Kossoy immediately instructed Mr. Rumpf in a reply letter not to enter into any settlement agreement with respect to the within action until the total possible tax liability which might be asserted against Senate and its principal shareholder had been determined. No such determination was made or has since been made. Senate (34A) and Kossoy (64A) both flatly assert that no other instructions were given Rumpf, and indeed Rumpf does not even claim to have had further instructions. (67A-70A) In short, despite clear instructions, Mr. Rumpf agreed to, and did enter into, a stipulation with counsel for the Commissioner compromising the within action. Mr. Rumpf's affidavit filed in opposition to Senate's motion does not claim that he had any conversation or communication with anyone at

Senate as to the merits of this settlement; Mr. Rumpf's affidavit does not assert that anyone at Senate authorized the settlement. Senate has never had an opportunity to present its defenses to the claims which were asserted against it and unless Senate prevails on this appeal no trial ever will be held.

Flood v. Commissioner, supra, involved a similar challenge to a final Tax Court stipulated decision entered into by taxpayer's attorney. The Ninth Circuit acknowledged initially that an attorney signing an unauthorized stipulation in the Tax Court would be committing fraud upon the court as a matter of law; however, the court went on to conclude that the attorney there had been given the requisite authority to enter into the stipulation by reason of a general power of attorney, which was held to apply to the Tax Court, conveying on the attorney wide authority to act, including the authority to settle. Fraud upon the court accordingly was not shown.

In the within action, Mr. Rumpf entered an appearance for Senate in the Tax Court, and Senate does not contend that he lacked authority to do so. Unlike the situation in Flood, however, Mr. Rumpf signed the settlement stipulation without any authorization. He never held any power of attorney to act in the Tax Court, though he had been given,

in 1969, a limited power of attorney to represent Senate before the Internal Revenue Service. But of overriding importance is the fact that Mr. Rumpf sought instructions and received express instructions not to settle. As Professor Moore puts it:

> "[A]n attorney is an officer of the Court. While he should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court." 7 Moore's Federal Practice ¶ 60.33 (2d ed. 1974).

CONCLUSION

Here, in the face of contrary instructions, Senate's counsel entered into an unauthorized stipulation compromising the within action. Senate, as does any other taxpayer, has a right to present the merits of its case at a fair hearing.

In its substantive motion before the Tax Court, Senate presented serious allegations which, if proven, show fraud upon the court. Those allegations were not controverted by the affidavit Mr. Rumpf filed with the Tax Court in opposition to Senate's motion. Just as in Toscano v. Commissioner, supra, "[i]f [Senate] can prove these claims, [it] has never had [its] day in court." 441 F.2d at 936.

We respectfully submit that this Court should reverse the order of the Tax Court denying Senate's motion for leave to file a motion to vacate the stipulated decision of May 7, 1973, and should require the Tax Court to hold a hearing on the substantive motion to vacate said stipulated decision.

Respectfully submitted,

DONOVAN LEISURE NEWTON & IRVINE
30 Rockefeller Plaza
New York, New York 10020
Attorneys for Appellant
Senate Realty Corporation

Of Counsel:*

John Cooley Baity
M. Lauck Walton

* E. Maureen Olson, Esq., formerly associated with the firm, assisted in the preparation of this brief and John Scagnelli, a student at the Yale School of Law, assisted in the research.

V. ADDENDUM

INT. REV. CODE OF 1954, § 6213(a):

> Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B or chapter 42 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

INT. REV. CODE of 1954, § 7442:

> The Tax Court and its divisions shall have such jurisdiciton as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926.

INT. REV. CODE OF 1954, § 7481 provides in pertinent part:

> Except as provided in subsection (b), the decision of the Tax Court shall become final -
>
> Upon the expiration of the time allowed for filing a notice of appeal, if no such notice has been duly filed within such time. . . .

INT. REV. CODE of 1954, § 7482(a):

> The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

INT. REV. CODE OF 1954, § 7483:

> Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

Tax Ct. R. 162:

> Any motion to vacate or revise a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit.

Tax Ct. R. 201(a):

> Practitioners before the Court shall carry on their practice in accordance with the letter and spirit of the Code of Professional Responsibility of the American Bar Association.

CODE OF PROFESSIONAL RESPONSIBILITY, DR 7-101 (A)(3) provides in pertinent part:

> A lawyer shall not intentionally . . . prejudice or damage his client during the course of the professional relationship . . . .

CODE OF PROFESSIONAL RESPONSIBILITY, EC 7-7 provides in pertinent part:

> In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative case.

CODE OF PROFESSIONAL RESPONSIBILITY, EC 7-8

provides in pertinent part:

> A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so . . . a lawyer should advise his client of the possible effect of each legal alternative. . . .

26 C.F.R. § 601.509 (1974):

> In a case docketed in the Tax Court of the United States, the petitioner and the Commissioner stand in the position of parties litigant before a judicial body. The Tax Court has its own rules of practice and procedure and its own rules respecting admission to practice before it. Accordingly, a power of attorney or a tax information authorization is not required by the Revenue Service in cases docketed in the Tax Court. Correspondence in connection with cases docketed in the Tax Court will be addressed to counsel of record before the Court. In all cases pending in the Appellate Division, other than cases docketed in the Tax Court, the customary power of attorney or tax information authorization is required.

STATE OF NEW YORK)
; ss.:
COUNTY OF NEW YORK)

Kevin J. Toner , being duly sworn, deposes and says:

1. I am over the age of 18 years and am not a party hereto.

2. On the 30,day of September , 1974, I served the annexed BRIEF AND JOINT APPENDIX upon the attorney named below by depositing a true copy thereof enclosed in a properly addressed postpaid wrapper in an official depositorv under the exclusive control of the United States Postal Service within the State of New York, directed to said attorney at the address previously designated herein for that purpose, as follows:

Hon. Scott P. Crampton
Assistant Attorney General
Tax Division
Department of Justice
Washington, D.C. 20530

Kevin J. Toner

Sworn to before me this
30th day of September 1974.

Notary Public
THOMAS J. GERNA
NOTARY PUBLIC, State of New York
No. 41-0607760
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1975

Paul J. Curran (R.I.)

Sept. 30, 1971 -